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Kmak, Magdalena Katarzyna

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The Impact of Exile on Law and Legal Science 1934–64

Magdalena Kmak¹

Introduction

According to the survey ‘List of Displaced German Scholars’ compiled by the *Notgemeinschaft deutscher Wissenschaftler im Ausland* together with the London Academic Council, as many as 1,639 German scholars lost their positions in the first half of the 1930s. This number grew to over 2,000 after the German annexation of Austria (Krohn 1993: 12; Ash and Söllner 1996: 7). Over a hundred of those who lost their academic positions were lawyers, which constituted about 26 per cent of the law faculties’ staff (Beatson and Zimmermann 2004: 51). About 60 per cent of scholars dismissed from German universities in the 1930s went into exile (Krohn 1993: 15).

Despite assistance by individuals and refugee relief organizations, scholars in exile were often forced on arrival to cope with anti-Semitism and the impact of the Great Depression, both of which significantly influenced universities’ ability and willingness to accept them. Thus for many, exile meant not only loss of scholarly prestige and academic position but also often loss of livelihood, impoverishment and the need to remain at the mercy of others. In addition, émigrés had to overcome not only the language barrier and differences in education and teaching traditions but also a more general rejection of German culture as broadly understood due to its association with the rise of Nazism and fascism (Greenberg 1987; Coser 1984; Fermi 1968). This experience had a significant transformative impact on the work of émigré scholars.

This chapter constitutes an attempt to achieve a more comprehensive understanding of these scholars’ experience of exile and its role in the development of scientific legal thought. That task requires a focus on the conditions of knowledge production and the way disciplinary methodologies were transformed under the circumstances of exile. This approach necessitates going beyond the perception, long dominating in exile studies, that treats the transfer of knowledge under exile as one-sided and static. Instead, and without forgetting its traumatic circumstances, exile needs also to be perceived as a formative and dynamic process (Konuk 2005: 32; Burke 2016: 39). In other words, we need to treat exile as a practice through which knowledge is produced and to understand the workings, effects and implications of exile in relation

to the life of émigré scholars and their scientific work (see Aradau 2014: 8). The point of departure for a study of the impact of exile on scientific thought is the theory of acculturation, broadly understood as a mutual process of cultural interchange between minority and majority cultures (Strauss 1991: 82; Ash and Söllner 1996: 12), leading to the deprovincialization of thought and knowledge (Tillich 1961: 139). In particular, a scholar's exposure to alternative styles of thought and exposure of the host society to new ideas and knowledges constituted, according to Burke, double deprovincialization (Burke 2016: 40). This approach, however, needs to be expanded to encompass other aspects of exile, including, for instance, its political context or the fact that scientific and cultural exchange happened not only between the exiles and the staff of the host universities or society in general but also between the exiles themselves in such institutions as, for instance, the University in Exile (Camurri 2014).

This chapter follows the journey of émigré scholars and introduces the reader to the reasons, mechanisms and repercussions of exile on legal science, taking as its main case study émigré law scholars from Nazi Germany to the UK and the United States. To be sure, the experience of scholars from Germany is one of many in the twentieth century (see, for instance, Fermi 1968; Camurri 2014). However, the choice of focus for this study is based, on the one hand, on the breadth of available archival and secondary materials, which allows us to undertake the difficult task of tracing the role of exile in the development of scientific thought. As Kaius Tuori points out in Chapter 2 of this book, the difficulty of such a study lies in the fact that in most cases the émigrés themselves have not reflected on the impact of forced displacement on their work. For that reason, access to archival materials such as private correspondence or existing biographies and studies and scholarship itself is crucial. On the other hand, however, despite the vast array of research on immigration from Nazi Germany in general, and on the fate and impact of German refugee scholars in particular that has already been conducted, many aspects of exile remain unstudied (see Camurri 2014). Even though some studies of the impact of exile on particular disciplines and the role of exile in fostering new knowledge have recently been published (Rösch 2014) existing scholarly analyses of the impact of émigré scholars on law have primarily been conducted in the form of biographical studies (Mattei 1994). For example, *Der Einfluß deutscher Emigranten auf die Rechtsentwicklung in den USA und in Deutschland* contains chapters focusing on thirty-nine individual scholars and their impact on American law (Lutter, Stiefel and Hoeflich 1993) while *Jurists Uprooted* presents biographies of sixteen refugee and émigré legal scholars and their impact on the development of English law (Beatson and Zimmermann 2004). Chapters usually focus on individuals' concrete scholarly achievements and their dissemination within the discipline (Lutter, Stiefel and Hoeflich 1993). Overall, these studies are fragmented and lack a carefully elaborated socio-legal framework. They are also often written by scholars' students, who display a tendency to glorify their teachers. This article, however, shifts the focus of the study from individuals to the phenomenon of exile itself. It is grounded in the claim that the practical experience of exile has had a critical impact on the development of legal thinking and on shaping post-war Europe. Such an impact of exile on science has also been acknowledged by migrants themselves. Many asserted that they would not have accomplished as much as they had if they had remained in

their home countries (Fermi 1968: 16; Hughes 1975: 3). Moreover, it has been this ‘interstitial or boundary situation’ that stood behind their creative force (Fleming and Bailyn 1969: 8). For instance, Paul Tillich pointed out in a lecture how exile had deprovincialized him and his thought (Tillich 1961: 139), and Theodore Adorno remarked that due to exile in the United States he became ‘inclined ... towards critical scrutiny’ (Hughes 1975: 3). Additionally, the most recent study on the impact of the experience of exile on historiography underlines the ‘potential of exile for fostering innovation and cross-fertilization’ (Berger and De Baets 2016: 16), which occurs in three dimensions: ‘mediation between the cultures of the exile’s homeland and the host country; distancing from both cultures, especially liberation from the conventional wisdom current in the host country; and the hybridization of different styles of thought resulting from these cultural encounters’ (Burke 2016: 39 and 44).

However, to understand the scope of the impact of exile on development of law, one needs first to analyse the different aspects of the exile experience (Camurri 2014). For that reason, the first part of this chapter focuses on the reasons for and mechanisms of exile, the loss of position and expropriation of property, the processes of leaving, the networks and societies that helped scholars before leaving and while in exile and their personal integration in their receiving countries. Secondly, one needs also to understand the relationship between exile and science, the latter to be approached not only from the perspective of a scientific discipline but also from the perspective of the individual intellectual trajectory (Ash and Söllner 1996: 14). Therefore, the second part of the chapter traces the academic careers of legal scholars in exile. The focus there is on the academic integration of émigrés, the role of their intellectual heritage and scientific agenda, as well as the impact of American legal thought, academic culture and scientific methodologies and, finally, political developments in influencing the directions of their research (see, for instance, Rösch 2014: 6). In particular, this part of the chapter focuses on scholars coming to terms with their experience and striving to understand the development and operations of the totalitarian state and the threats it poses for the future. Here, the perception is of a marginalized position and the need to start afresh, without the support of one’s own scholarly environment, as critical for development of émigrés’ scientific thoughts. In concrete terms, this approach points towards the need to unearth a shift in the academic work and career of émigré scholars as a result of exile and to identify the influence of this intellectual turn on scholars’ work and understanding of their own discipline.

The mechanisms of exile

Exile can be understood as an embodied condition of forced displacement from one’s own country requiring a search for safe havens elsewhere. According to Camurri, ‘The meaning of exile in the 20th century essentially indicates the experience of fracture, of displacement from the motherland, of alienation lived as a loss, an injury’ (2014). Despite the fracture or loss brought about by exile, the process of exile itself also constitutes an intermesh of various mechanisms of leaving, travelling, arriving and coping. This part of the chapter looks at the mechanisms of exile from Nazi

Germany. The focus is, on the one hand, on the social, political and legal reasons for leaving the home country and the mechanisms of doing so and, on the other hand, on mechanisms facilitating arrival and personal integration, including networks of assistance, institutions and organizations that helped those in exile.

Dismissals and expropriations

Even though Hitler's political support in November 1932 had dropped to 32 per cent, he was not marginalized as predicted but through a number of legal and extra-legal measures took over power in Germany. His rise to power brought to surface the anti-Jewish sentiments permeating German society. Discrimination and boycotts of Jewish shops, offices, doctors and lawyers started immediately after the elections of 5 March 1933. Expropriations, arrests and emigration followed (Neumann 1966). Many of those who did not support anti-Jewish measures remained silent under social pressure. The Act 'for the restoration of the professional legal service' (*Gesetz zur Wiederherstellung des Berufsbeamtentums*, shortened to *Berufsbeamtengesetz*) and other decrees that followed effectively eliminated Jews from public life (Beatson and Zimmermann 2004: 3–6; Neumann 1966: 111–20).

These measures culminated in the Nuremberg Laws in September 1935 stripping Germans of Jewish origin of citizenship of the Reich and aiming to protect German blood and German honour by instituting the crime of race defilement. These laws were also accompanied by expropriations of material possessions and measures aiming to liquidate available sources of income. Jews found themselves without income and material resources after the *Reichskristallnacht* on 7 November 1938 and the decree on 'elimination of Jews from German economic life' (*Verordnung zur Ausschaltung der Juden aus dem deutschen Wirtschaftsleben*). Even those leaving the country were obliged to pay a special tax on account of leaving Germany. It is estimated that emigrating Jews during 1933–7 lost from 30 to 50 per cent of their assets and during 1937–9 from 60 to 100 per cent (Beatson and Zimmermann 2004: 34–6; Neumann 1966: 116–20).

The Nazi takeover also had an immediate impact on the German universities, including the law faculties. Even though some scholars, for instance those serving in the army during the First World War, were protected by exceptions to the Law for the Restoration of the Professional Civil Service (*Gesetz zur Wiederherstellung des Berufsbeamtentums*), many were dismissed or forced to retire, while others resigned in protest. One of the first victims of these policies at the University of Berlin was professor of Roman law Fritz Schulz (focused on in greater detail in Chapters 2 and 4 in this book). His salary was reduced and he was asked to stop giving lectures and holding seminars. The final measure against him was early retirement. Despite this discrimination, many distinguished scholars did not emigrate until the last moment. For example, Schulz left only in April 1939 for the Netherlands, from where he left for the UK four months later (Beatson and Zimmermann 2004: 47).

Unlike in the case of these older and more established professors, the situation was different for younger scholars and those termed by Krohn as *double outsiders* – scholars of Jewish origin holding socialist or liberal views. For them, the beginning of the 1930s meant living in constant uncertainty in a non-tolerant Weimar Republic. For instance,

both Otto Kirchheimer and Franz Neumann, scholars active in the labour unions and Social Democratic Party, began studying English intensively as early as 1932 to prepare themselves for emigration. These individuals were among the first to leave the Nazi Republic after 1933 (Krohn 1993: 15). The chairs and positions vacated by Jewish scholars were given to their Aryan colleagues, none of whom protested against the dismissals. Finally, any resistance to these actions from the university leadership stopped after the introduction of the principle of Führer leadership (*Führerprinzip*) in all academic institutions in October 1933. This resulted in changes in higher university positions for those politically sympathetic to the new regime (Beatson and Zimmermann 2004: 31).

Overall, according to reports by aid committees, about 1,200 academics lost their jobs in Germany during 1933 in consequence of the Nazi takeover. This number rose to 1,700 after inclusion of those who lost their positions towards the end of the 1930s and to 2,100 after the annexation of Austria. With other academic professionals this number amounted to 7,500, and with artists, writers and other freelancers the number possibly amounted to as many as 12,000 (Krohn 1993: 12).

Emigration

As a consequence of these changes, Jews and political opponents of National Socialism started to leave Germany from 1933. 37,000 left in 1933 alone, and many tens of thousands left in the following years, peaking at 78,000 in 1939. Fewer people were able to leave during the war: These numbers amounted to some 30,000 between 1940 and 1945. In addition, many Germans were leaving for political reasons. However, unlike Jews, who seemed to be encouraged to leave Germany, the Nazis did not want their political opponents abroad and in consequence they were under heavy surveillance by the Gestapo, kidnapped or assassinated (Beatson and Zimmermann 2004: 43–4). Overall, even though it is very difficult to make precise statements about the extent of emigration after 1933, the high commissioner for refugees estimated the numbers of all exiles as approaching 500,000 by the time the Nazi Reich collapsed (Krohn 1993: 15).

Before the 1930s the main motive for scholarly emigration was an opportunity to find teaching and research positions due to their limited availability in Europe. However, after Hitler's rise to power increasingly large numbers of European scholars and intellectuals were forced to leave due to dismissals and persecution. It is assumed that 60 per cent of scholars dismissed in the 1930s went into exile (Krohn 1993: 15). In the case of law faculties, the number amounted to sixty-nine individuals, of whom sixty were of Jewish faith or origin. Eight out of twenty-eight of those who did not emigrate returned to the universities after the war. The others died. Out of forty-four legal scholars removed from office for political reasons, nine decided to emigrate. Of the twenty-eight who remained in Germany, eighteen survived and twelve went back into law teaching after the war, mostly to their old posts (Beatson and Zimmermann 2004: 53).² Overall, about 2,000 German scholars left the country (Krohn 1993: 12; Ash and Söllner 1996: 7; Fermi 1968: 13). The exodus of German scholars was often compared to the exodus of the Greek upper classes after colonization of the Byzantine Empire by the Ottomans. Indeed, in such disciplines as social sciences and economics, dismissals and exile often meant the expulsion of entire research traditions (Krohn 1993: 13).

The emigration path of those who escaped led first to neighbouring countries – France, the Netherlands or Czechoslovakia. For instance, before reaching the United States, Hannah Arendt, after being arrested by Gestapo for helping her Marxist friends and colleagues, escaped to France, where she ended up being detained in the women's concentration camp in Gurs (Coser 1984: 191). For those wanting to escape Continental Europe, the route through Spain and Portugal was for a long time the only way to do so. In particular, those caught in southern France were forced to cross the Pyrenees to reach Lisbon. The United States admitted 1,300,000 persons, while 759,000 ended up in Latin America. The UK sheltered 80,000 refugees, while 55,000–60,000 emigrated to Palestine. Additionally, some 100 scholars found positions in Turkey, where Kemal



Figure 1 An immigration officer checks the names of refugees escaping Nazi persecution. Photo by Bettmann via Getty Images.

Ataturk had introduced a programme of modernization and Westernization of Turkish universities, based largely on the German scholarship tradition (Konuk 2005: 35). However, some countries, such as Switzerland, Sweden and South Africa, closed their borders to refugees immediately or later on. Finally, the Soviet Union accepted only communists (Beatson and Zimmermann 2004: 40–1).

The emigration of Jews from Nazi Germany met a mixed reception in the receiving countries. For instance, whereas British migration policy remained, with some exceptions, unchanged after 1933 so that Germans and Austrians did not require a visa to go there (Beatson and Zimmermann 2004: 41–3), in the United States the National Origin Act of 1924 introduced the principle of national origin (which after heated debate entered into force in 1929), creating an obstacle for those in need to leave. According to the principle, the maximum number of visas issued to immigrants from all countries except the Americas was set at 150,000. The Act, however, allowed for exceptions and grant of non-quota immigrant visas to ministers of any religion, bona fide teachers of higher education who would be teaching in the United States, and to their families allowing them to obtain a visa to the United States more easily. These measures tipped the balance from immigration by the unskilled to immigration by the educated. Those immigrants became, in the words of Fermi, ‘doubly privileged’ (Fermi 1968: 24–6). However, despite these exceptional measures, commentators point towards a strong resistance to immigration in the US State Department, which was also creating obstacles to the grant of visas to refugee scholars. These sentiments did not change even after a request from President Roosevelt himself to treat refugees with special consideration (Krohn 1993: 87–8).

Consequently, even though the United States became the most popular country of destination for refugee scholars, most of them decided to first stay in Europe, in particular in the UK, or went to Palestine or Turkey. The strict laws, the small number of positions for émigré scholars and the scholars’ own negative attitude and scepticism towards the United States and American culture influenced scholars’ choices (Krohn 1993: 16). These approaches changed, however, as a result of problems with integration and belonging in European countries, which turned out to be less of a problem in the United States (Neumann 1961: 18). Additionally, excitement about the New Deal and an increase in assistance from donors and foundations (for instance the Rockefeller Foundation) influenced scholars’ choices. Geographically, in the United States, the journey of most scholars ended at the US East Coast, which ever since the seventeenth century had traditionally functioned as the final destination for German-speaking immigrants. It was also there that assistance for refugee scholars was the most developed and where such scholarly havens had been created as the University in Exile at the New School for Social Research or the Institute for Advanced Study at Princeton University (Coser 1984; Fermi 1968; Krohn 1993).

Arrival and support

Rescue operations and assistance agencies both in Europe and beyond supported refugees to a remarkable extent (Camurri 2014). Internationally, assistance to refugees from Germany was provided to a certain extent by the League of Nations, which in

1933 established the institution of High Commission for Refugees from Germany. The Commission not only pursued diplomatic negotiations with Germany but also provided documents to refugees such as residence and work permits, identity and travel documents. Additionally, the Committee of Experts for Academic and Kindred Refugees from Germany was established with the aim of coordinating national academic committees. In practice, however, the Commission was not legally or organizationally part of the League of Nations, and in reality it exercised only moral authority (Krohn 1993: 25–6). In consequence, the first high commissioner, James G. McDonald, resigned due to dissatisfaction with the League's failure 'to remove or mitigate the causes which create German refugees' (Fermi 1968: 71). It was therefore for national agencies and institutions to assist refugee scholars.

In Europe the main assistance agencies included the *Notgemeinschaft deutscher Wissenschaftler im Ausland* (Emergency Assistance Organization for German Scientists), which was formed by German Scholars in Switzerland. Funding for its activities came from contributions from displaced scholars themselves. The organization's most widely known achievement was a detailed list of 1,639 German scholars displaced from their posts, published in 1936 by the Rockefeller Foundation. A second agency was the *Comité International pour le Placement des Intellectuels Réfugiés* (International Committee for Placement of Refugee Intellectuals) in Geneva, consisting of representatives of many Western countries, including the United States. The Committee's competence was not limited to scholars only (Fermi 1968: 62–3). In addition, a number of support bodies were created in countries such as England, France, Belgium, Holland, Denmark and Sweden. In England, the Academic Assistance Council was established with the aim of assisting 'those university teachers and investigators who, on grounds of religion, political opinion or race, were unable to carry on their work in their own country'. In practice the Committee acted as a specialized employment agency. Its role was to collect data on exiled scholars and to pass those data to other organizations and institutions of higher learning (Krohn 1993: 27). By November 1938 the Council had placed 655 scholars in both permanent and temporary positions in 36 different countries including the United States (Fermi 1968: 63). The Committee also paid a small living allowance to refugees without employment. Funding for its operations was raised from among the public and academia. Many members of British and American universities as well as émigrés already in Britain voluntarily taxed themselves (from 2 to 5 per cent of their salaries) for this purpose. The Council helped not only German scholars but also scholars displaced from other countries such as Austria, Hungary, Czechoslovakia, Italy, Poland and Spain. It even bypassed official American institutions and sent scholars directly to the United States. By 1935 the Academic Assistance Council had registered 1,200 names and by 1939, 2,541 (Fermi 1968: 64–5).

Turkey presents an interesting example of support to refugee scholars from Nazi Germany after Atatürk's decision to westernize Turkish universities. In 1933, the new University of Istanbul employed around fifty German scholars for a period of five years. Additionally, the new University of Ankara employed another group of German scholars. In total, a hundred academic teachers were placed in different universities in Turkey. At the beginning, many of the academic positions were negotiated with the Turkish government through the *Notgemeinschaft* organization. However, later

nominations had to be agreed on by the Nazi government, which limited the chances of refugee scholars to obtain positions. However, most of the Germans could not adjust and left Turkey after their contracts expired (Fermi 1968: 66–70; Konuk 2005: 33–6).

In the United States, excitement at receiving quality scholars competed with the effects of economic depression. To explain the situation in contemporary terms, strong push factors clashed with a general lack of pull factors. Very often, lack of available funds to employ émigrés was often combined at the universities with xenophobia, in particular among unemployed, mostly young, scholars (Fermi 1968: 72). In consequence, the United States received proportionally the least number of refugees in comparison to European countries. In opinion polls, over two-thirds of respondents were against relaxing the immigration rules, which did not happen, even after the defeat of France in 1940. For that reason most of the aid for refugees was in private hands, including numerous Jewish organizations and Christian churches, Quakers and other charity organizations (Krohn 1993: 26).

However, thanks to the involvement of these individuals and donors, a number of institutions providing assistance to refugee scholars had been created. First, in 1930 Abraham Flexner established the Institute for Advanced Study at Princeton. The Institute first focused on assisting scholars of mathematics and economics (for instance it recruited Albert Einstein). However, after 1933 it opened its doors to the humanities as well. The idea behind the Institute was to balance between American and foreign scholars (Fermi 1968: 73).

Another famous institution, the University in Exile, was established in 1933 by Alvin Johnson within the New School for Social Research and was able to operate thanks to private and institutional donations. The main purpose of the University in Exile was to allow continuation of the German research tradition in social sciences. Again, the initial focus of the University on economists was later expanded to other disciplines, and by 1939 the University in Exile was employing thirty-three émigré faculty members (Cosser 1984: 102–9). Unfortunately, the efforts of these two institutions to provide safe havens for émigré scholars were not emulated by other universities, which did not wish to accept immigrants. One such example was Harvard University, with its established quota for Jewish students and its professors often expressing pro-Nazi opinions (Krohn 1993: 59–76). In addition, some American universities actively welcomed pro-Nazi scholars on their campuses (Norwood 2011).

These sentiments were, however, mitigated by another institution – the Emergency Committee in Aid of German (Foreign) Displaced Scholars, established in 1933 and consisting of presidents of universities and educational institutions – aiming to coordinate activities supporting persecuted European scholars. The Committee provided scholars with temporary positions of from one to three years at universities across the United States. Thanks to funds raised from private donors and foundations, the Committee helped 335 individuals, contributing financially to scholars' salaries (Fermi 1968: 76–8; Krohn 1993: 27). Finally, the Emergency Rescue Committee for Refugees was established after the fall of France, initiated by those émigrés who were already in the United States. It conducted underground work in Marseilles with the aim of bringing scholars and intellectuals to the United States and rescued up to 1,800 refugees before the office closed in 1942 (Fermi 1968: 85).

One of the most important donors supporting the activities of rescue and relief organizations was the Rockefeller Foundation, which allocated 1.4 million dollars to help displaced scholars. This sum constituted half of the funding raised in the United States for assistance to refugees. One-third of the Foundation's funding went to scholars outside the United States, and in terms of disciplines the biggest share of funding went to the social sciences (for instance 540,235 dollars went to the University in Exile). However the Foundation's considerable financial support provided during the first few years after 1933 did not result in increased numbers of scholars placed by the Foundation with US universities. This was because the Foundation supported scholars in Europe through its office in Paris. However, the Rockefeller Foundation, supporting such institutions as the Frankfurt School, with many Jewish scholars, was also trapped between the wish to support innovative research and the fear of having a negative effect on public opinion in Germany. After 1933 the Foundation's employees were even expressing pro-Nazi sentiments (Krohn 1993: 31–6).

To sum up, despite existing anti-Jewish sentiment, support for scholars was quite extensive. However, this support decreased after 1937 and 1938 when the number of scholars from other countries such as Austria, Czechoslovakia and Poland grew rapidly. Official channels, however, were not the only way of obtaining assistance – personal relations were also of great importance when selecting foreign scholars. Those who had been in the United States on a previous visit had the best chance of obtaining an academic position. In addition, personal connections with those already in America, who could provide some support or reference letters, were very helpful. In practice, those scholars with established professional or family contacts were subjected to less strict selection processes (Fermi 1968: 82–4). On the other hand, young scholars were in the most difficult situation because of the fear of encroaching on professional opportunities for young American scholars. Therefore, assistance was restricted to scholars over thirty years old. Only the Oberlander Trust did not follow this rule and gave small grants to younger émigrés (Krohn 1993: 29).

The impact of exile on legal science

Assessing scientific change under circumstances of exile requires not only analysis of the mechanisms of exile but also its relationship with science. According to Ash and Söllner, the most interesting scientific change occurred not within scientific disciplines but 'above' and 'below' them, a change that can be traced in detail only on the level of research groups or individual biographies (Ash and Söllner 1996: 14). This approach corresponds with the understanding of exile as individualized experience. As underlined by Turton studying forced displacement, 'By emphasising the common experience and common needs of forced migrants, we risk seeing them as a homogeneous mass of needy and passive victims. The truth is that there is no such thing as the "Refugee Experience" ... and there is therefore no such thing as "the refugee voice": there are only the experiences, and the voices, of refugees' (Turton 2003: 7). For that reason, to avoid simplification (see Camurri 2014), over-interpretation and projection, research into the impact of exile on science requires extensive archival research of scholars' private

correspondence, courses and lecture notes or notes from meetings and conferences, in addition to scrutiny of their scientific writings.

Coping and integration

Every individual copes with the experience of exile and loss in a different, idiosyncratic manner. Scholars, while no exception, are forced to grapple not only with human and material losses but also with the loss of intellectual territory, language, audience or status (Neumann 1961: 12). German-speaking scholars had in addition to redefine their relationship to German legal culture and scholarly tradition, which had often been renounced in the United States as complicit in the rise of Nazism and fascism (Greenberg 1987). Finally, Jewish scholars had also been subjected to anti-Semitism in their countries of arrival. As a result, many were unable to acquire the same status as in their home country, which often constituted a source of frustration. Scholars were also themselves widely diverse in relation to their backgrounds, political opinions and racial origins, which affected their adaptation (Coser 1984: 4).

Émigré lawyers and legal scholars in particular suffered the greatest difficulties (Fermi 1968: 79) due to minimal resemblance between German and American legal traditions and education. Indeed, as pointed out by Graham, by the end of the 1930s placing foreign jurists in US law schools was nearly impossible (Graham 2002), and most of them were in practice faced with the need to start afresh. In her detailed study of intellectual migration from Europe to the United States, Fermi devotes only one-and-a-half pages to those legal scholars who found academic posts at US law schools. According to her, the successful ones were specialists in branches of law that were of interest in the United States such as comparative, Roman or international law, mentioning only six names: Eberhard Bruck, Adolf Berger, Arthur Nussbaum, Friedrich Kessler, Max Rheinstein and Hans Zeisel. Other sources mention additional names but the list remains rather short (Stiefel and Mecklenburg 1991). Excepting these few, scholars who eventually found academic positions in law had first to re-educate themselves and complete law studies in the United States. For instance, Edgar Bodenheimer (who obtained his doctoral degree from the University of Heidelberg and in 1966 became professor of law at the University of California, Davis), after arriving in the United States, completed basic law studies at the University of Washington (Stiefel and Mecklenburg 1991: 56–7). Other scholars – the biggest group – rebranded themselves and took positions at political or social sciences departments (Coser 1984: 6). Indeed, out of sixty-four émigré scholars that Söllner identifies as holding a teaching and research position in political science in the United States, thirty-three obtained their doctorates in law (Söllner 1996: 250, 271).

For example, Hans Kelsen was able to find a stable position in US academia only at the department of political science in Berkeley. In the words of his Austrian friends, ‘In America he has not done as well as in Europe and is not as highly regarded or widely known’ (Fermi 1968: 351). Yet what Scheuerman refers to as ‘Professor Kelsen’s Amazing Disappearing Act’ (2014) did not pertain to Kelsen alone. Superficially it indeed seems as if the German legal tradition simply vanishes into thin air when coming into contact with its American counterpart. But a closer look at the lives and work

of the émigré scholars reveals that their legal background continued to underlie and orient their scholarly work. More importantly, this turn had a tremendous influence on the development of law and on the understanding of the role of law in society.

According to statistics, of sixty-nine legal scholars from Germany, forty-eight were able to continue their academic career in the host country (mostly the United States or the UK) (Beatson and Zimmermann 2004: 54), and they were mostly active in areas other than doctrinal fields of German private law, public law or criminal law. For instance, both Franz Neumann and Otto Kirchheimer, who in Germany were practising lawyers specializing in labour law, joined the Frankfurt Institute of Social Research in exile, first in London and later at Columbia University (Ruckert 1993), subsequently obtaining academic positions in political science at the New School and Columbia University (Stiefel and Mecklenburg 1991).

Finally, research on law was not only the domain of legal scholars working in both law and political science departments. Another group of scholars did not come from the legal tradition but started to work on law as a result of their exile experience. One of those persons was Hannah Arendt, who in exile in the United States wrote extensively about exile, political justice and human rights (Arendt 1999, 2006). Her writings clearly indicate her turn from philosopher to political scientist deeply interested in such questions as the origins of totalitarianism and the role of human rights.

So, what were the conditions of personal and academic integration and acculturation for scholars in exile? First, immigrants met a mixed reaction and often anti-Semitic sentiments, both at universities and in society in general. In the UK, refugees other than lawyers and doctors were in principle welcomed. Even though a societal tendency to accept anti-Semitic stereotypes has been noted by commentators, this was mitigated by the characteristically British stance of 'moderation and tolerant compromise' (Beatson and Zimmermann 2004: 78–9). Nevertheless, many German refugees, including such scholars as Fritz Schulz and Fritz Pringsheim, were interned on the Isle of Man as 'enemy aliens'. Additionally, many scholars, such as Franz Neumann, who spent their first years of exile in the UK, quickly realized that employment opportunities in the UK were severely limited (Jay 1986: xi). In the United States, despite better opportunities, both competition for academic positions and anti-Semitic prejudices were quite prominent. Here the situation was paradoxical. On the one hand, many in the United States believed that the country should quickly reach and invite the best scholars to its own universities as the German education system enjoyed a very high reputation (Greenberg 1987). This approach clashed, however, with isolationism, limits imposed on immigration, anti-Semitism and a difficult economic situation at the universities resulting from the great depression (Krohn 1993: 26). On the one hand, those scholars who in the UK were perceived as 'insufficiently suitable' due to their inability to adapt were often told to try their chances in the United States, where acculturation was much easier (Ash and Söllner 1996: 12). On the other hand, German scholars were perceived with particular suspicion as competitors, especially by younger American scholars. In consequence, many universities deliberately sabotaged efforts to welcome more German scholars. Arriving professors were often caught in what Krohn describes as the 'double handicap' of being both Jews and migrants. In the words of Heilbut,

'Racism was a central fact of American life; below the Mason-Dixon line, it was law.' According to Heilbut, racism seemed so endemic that Franz Neumann even declared that the United States was more anti-Semitic than Germany. 'This was Neumann's way of asserting that the character of his homeland was essentially benign – he contended that Hitler was an aberration – but his statement also expresses the belief, widespread among émigrés, that most Americans shared the Nazis' prejudices' (Heilbut 1997: 50).

Coping mechanisms were also affected by the level of similarity between the home universities and the science and intellectual requirements in exile. Many scholars could not display their talents, skills and achievements in a new language, in a new environment and under the new 'rules of the game' defined by native scholars: 'They often found themselves in the paradoxical situation of feeling superior to the members of the group whose approval or esteem they sought, while the members of the new group frequently perceived them as inferior for not knowing the rules of the game' (Coser 1984: 5).

Coping in a new environment also depended on transferability of skills and knowledge within different disciplines. Adaptation was much easier for natural scientists, or for instance for economists trained in mathematics or those with a neoclassical orientation rather than those trained in historical economics. Besides, scholars representing areas in which they filled a need not previously met, such as psychoanalysis, or in areas where they could relate to an already established tradition, such as social psychology or philosophy, found themselves to be most influential (but see Ash and Söllner 1996). In many cases, however, Americans rejected the orientations of Europeans if there was little in common between German and American science, as occurred, for instance, in the case of gestalt psychology in psychology dominated by behaviourism. In general, scholars outside the natural sciences and engineering (except such well-known figures as Thomas Mann or Albert Einstein) were forced to lower their expectations in order to find any position at all.

Finally, the age and position of scholars constituted another factor in their path to integration. In principle, the older generation was in a much more difficult position than younger scholars, despite the restrictions on admitting scholars younger than thirty. Whereas the latter found it much easier to find their place in American society and, for instance, to acquire new academic degrees, the former struggled to build networks to help them learn about opportunities and navigate between their own demands and societal expectations (Coser 1984: 6–9). This is visible, for instance, in the case of legal scholars such as Edgar Bodenheimer, mentioned earlier, who did not shy away from completing a basic law degree upon arrival in the United States, despite holding a German doctorate in law.

In addition to external conditions, scholars themselves adopted different approaches to their situation in exile and to local scholarship. According to Coser, differences among refugee scholars were quite prominent between 'locals' and 'cosmopolitans' in their professional orientation (Coser 1984: 5). Indeed, analysing the coping mechanisms of scholars in American scientific life, Franz Neumann identified three degrees of scholarly involvement in academia: (1) abandonment of previous intellectual positions and acceptance of a new position without questioning, (2) attachment to own old thought structures with an attempt to change American patterns or, if that failed,

retreating into own circles and (3) integration of old tradition and new experiences. According to Neumann, the third position was not only the most difficult but also the most rewarding solution for a scientist. Moreover, the best setting for development of the third type of scholar was in a mixed environment of native and refugee scholars, where émigrés could serve as ‘bridges’ between the old and the new (Neumann 1961: 20). In such environments, thanks to personal interactions between émigré and local scholars, not only could ideas be exchanged but also the ‘tacit knowledge’ of modes of working (Ash and Söllner 1996: 13). Unfortunately, some scholars never recovered from the shock connected to the exile experience and remained uprooted and isolated (Krohn 1993: 7). On the other hand, these peculiarities of life and work in exile, coping mechanisms, a marginalized position and the need to start afresh, without the support of one’s own scholarly environment were critical for development of émigrés’ thought (Rösch 2014: 3; Fleming and Bailyn 1969: 8; Hughes 1975: 2–3).

Scientific developments

The multifaceted relationship between exile and legal scientific thought is visible, for instance, in biographies of scholars focused on in other chapters of this book. They appear for instance in Kaius Tuori’s inquiry into the change in scholarship and scientific approaches under the influence of Nazism and exile in the UK in the work of Fritz Schulz, Fritz Pringsheim and David Daube. The shift happened despite scholars’ lack of self-awareness and often resulted from the unintended consequences of a move to a different scholarly tradition and work in a different language. The remaining part of the chapter provides initial reflections on how the experience of exile and the need to understand the development and operations of the totalitarian state influenced scientific work. As mentioned earlier, though, more work is needed to fully understand the impact of exile on individual intellectual trajectories of émigré scholars.

As a result of exile, many scholars, including lawyers, felt the need to come to terms with their shocking experiences and to understand the developments that had led to the victory of National Socialism in Germany (Krohn 1993: 130). As noted by Berger and De Baets, ‘Those who are on the losing side of history – those defeated in war, those victimized by human rights violations and indeed those forced to leave their homelands – develop an acute sense of the past’ (Berger and De Baets 2016: 13). In order to do so they had not only to confront their own intellectual heritage, which, as often claimed, resulted in creation of a totalitarian state (Greenberg 1987) but also to react to various scholarly methodologies and approaches to law and political science developed in the United States, also as a result of war. For instance, lawyers arriving in the United States found themselves in the midst of the debate between legal realists and ‘rational absolutists’. This debate, accelerated by the Second World War, often linked legal realism with totalitarianism and marked a shift towards natural-law thinking. Many scholars believed that some sort of ‘supralegal moral standard’ was needed as a basis for moral judgements (Herget and Wallace 1987: 437). In political science, behaviouralism was the prevalent paradigm, and similarly many émigrés became avid critics of the ‘behavioural revolution’, turning towards pre-modern ideas such as Christianity or natural law (Ash and Söllner 1996: 248).

A shift to natural law resulting from the experience of totalitarianism and exile is visible, for instance, in the scholarly work of Edgar Bodenheimer. His doctorate, completed in Heidelberg in 1933, focused on the principle of equality in corporate law (Bodenheimer 1933), but already in 1940 he published his best-known treatise in legal philosophy: *Jurisprudence: The Philosophy and Method of Law* (Bodenheimer 1974). According to Durham 'Whatever Bodenheimer's attitude towards natural law may have been before Hitler's rise to power, he has been a dedicated devotee of the doctrine ever since' (Bodenheimer 1993: 136). Bodenheimer continued his work on natural law, justice, rule of law and legal civility until his death in 1991. He clearly saw the link between the positivist denial of values and the risk that 'the human race will fall back into a condition of barbarism and ignorance where unreason will prevail over rationality, and where the dark forces of prejudice may win the battle over humanitarian ideals and the forces of good will and benevolence' (Bodenheimer 1974: 168).

On the other hand, for Schulz and Pringsheim, the experience of persecution in Nazi Germany prompted a turn towards the rule of law, and such virtues as humanism, individualism and freedom stemming from the principles of Roman law, which contrary to the Nazi law they experienced, was oriented towards justice. They were also inclined towards praising the classical Roman legal tradition and its value that was under attack in Nazi Germany (see Chapter 2 in this book).

Besides the focus on questions concerning the origins and characteristics of the totalitarian state and the role of law there, the relationship between law and politics, or the nature of the *Rechtsstaat* or the rule of law, has been enhanced by the turn of many lawyers towards political theory. To be sure, even though political science did not exist as a university discipline in the Weimar Republic, one can notice the politicization of the legal tradition in the work of many scholars of *Staatswissenschaft* (study of public administration), which then formed part of jurisprudence (Ash and Söllner 1996: 248). In addition, before the war many German-speaking scholars maintained scientific contacts with American scholars of political science. However, it seems that only the experience of exile enhanced the turn of lawyers to political science already established as a discipline in the United States.

In particular, it would be hard to imagine Franz Neumann's and Otto Kirchheimer's shift from law to political science without the exile experience. For instance, Neumann's publications before their exile focused on labour law and jurisdiction and constitutional aspects of freedom of association (Neumann 1929, 1931, 1932), but in exile turned to political and legal theory (Neumann 1935, 1936, 1964, 1984, 2009). According to Jay, this turn in Neumann's work would not have been possible without his stay at the London School of Economics under the direction of Harold Laski. The move from Germany to London resulted in lifting Neumann's 'horizons from purely legal questions to more broadly theoretical ones, while at the same time in a more radically leftward direction' as exemplified, for instance, in Neumann's essay 'The Change in the Function of Law in Modern Society' (Jay 1986: xi). And in the United States, it was the tension between Marxism and democratic liberalism that, according to Hughes, constituted the source of Franz Neumann's influence (Hughes 1975: 8).

Despite this turn, both Neumann and Kirchheimer did not renounce their legal background. For instance, Neumann's famous book *Behemoth: The Structure and Practice of National Socialism 1933–1944* (Neumann 1966) – a detailed account of the governmental workings of Nazi Germany – suggested that the Nazi organization of society involved the collapse of traditional ideas of the state, of ideology, of law and of underlying rationality. As he diagnosed, 'In any event, National Socialism is not concerned with legal conformity to the prevailing constitutional system. It substitutes the claim of "legitimacy". A system is "legitimate" when it has an intrinsic justification for existence, in this case, the success of the National Socialist revolution. In other words, the justification of the new constitution lies in its success' (Neumann 1966: 53).

Additionally, as pointed by Donna E. Arzt, 'With Franz Neumann ... Kirchheimer added a legal and political focus to the Frankfurt School's analysis of Nazism, which otherwise concentrated on cultural and psycho-social phenomena' (Arzt 1993: 36). His main work of 1961, *Political Justice: The Use of Legal Procedure for Political Ends* (Kirchheimer 1961), controversially grouped together such totalitarian states as Nazi Germany and Stalinist Russia with the United States. As noted by Arzt, this book brought together Kirchheimer's 'knowledge of law and ability to make socio-political sense of legal institutions and processes' (Arzt 1993: 44). In this sense, both Neumann and Kirchheimer themselves acted as a 'bridge' between the science of home and host countries.

Other scholars in exile also focused on the question of totalitarianism. In particular, in her most famous book, *Origins of Totalitarianism* (1985), Hannah Arendt (who turned from philosopher to political scientist interested in questions of the origins of totalitarianism or the role of human rights) dealt with similarities between the political regimes of Nazism and Stalinism, despite their different political and ideological background.

Finally, since émigrés were considered of paramount assistance during the war and in the post-war reformation of Western Germany (Greenberg 2014: 11) and Europe in general, their scholarship and expertise was not only politicized but also used for political purposes (Ash and Söllner 1996: 12–13). A number of scholars such as Herbert Marcuse, Franz Neumann and Otto Kirchheimer were involved in research conducted by the Research and Analysis branch of the Office of Strategic Services (OSS), a US military intelligence organization established during the Second World War. Their role was to write a series of reports on war crimes, de-Nazification and post-war military government. The OSS team, working under the leadership of Neumann (and later Kirchheimer), was responsible for preparation and supervision of various briefs prepared by Justice Jackson's prosecution office. It has been claimed that the theory of anti-Semitism advanced by Neumann at that time heavily influenced the work of the prosecutor's office (Salter 2000: 197–8). According to commentators, the experience of exile described in this chapter often left émigré scholars 'catastrophe-minded' (Coser 1984: 193). Many saw the conditions that would allow a reversion to dictatorship and totalitarianism still firmly in place and feared such a reversal (Hewitson and D'Aura 2012: 71). In particular, many scholars saw the link between Nazi ideology and communism so that in consequence anti-communism often became the ultimate goal of their work for US agencies (Hewitson and D'Aura 2012: 70) or at European universities (Lutter, Stiefel and Hoefflich 1993).

Conclusion

The aim of this chapter was to introduce the reader to the reasons, mechanisms and repercussions of exile through the experience of émigré law scholars from Nazi Germany in the UK and the United States. The chapter has shown the origins, mechanisms and effects of exile and reflected on its impact on academic scholarship. In particular, it perceived a marginalized position and the need to start afresh, without the support of one's own scholarly environment, as critical for development of émigrés' scientific thinking.

Tracing the shift in scientific work to the result of exile is difficult as it is embedded in various events and experiences, starting not only with scholars' scientific achievements and their position in academia but also with their personality, adaptability to new circumstances and sometimes connections and sheer luck. Despite the complexity, this chapter reflected on such aspects of the shift among scholars of law in the UK and the United States as the need to come to terms with persecution and war experiences, the need to understand the role of law in the totalitarian state and the political role of scholarship in preventing totalitarian regimes in the future.

In this chapter, exile is treated as a practice of knowledge production or a lens through which the scientific work of émigrés can be observed and analysed. This approach departs from and develops the theory of acculturation, allowing treatment of exile not only as a loss but also as a dynamic process which can contribute to the advancement of scientific scholarship. However, more research is needed, in particular archival research and research within the field of law as well as the methodology of exile, in order to understand the role of exile in development of science.

Notes

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- 2 The statistical information is quoted after *Jurists Uprooted: German-Speaking Émigré Lawyers in Twentieth Century Britain*, where it is gathered from multiple sources. For detailed information, see Beatson and Zimmermann (2004: 53).

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